

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

MAR 30 2000

PATRICK FISHER
Clerk

TIMOTHY ROBERT CASADY,

Petitioner-Appellant,

v.

RON WARD,

Respondent-Appellee.

No. 99-6373

(D.C. No. 97-CV-958-M)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **BALDOCK, HENRY**, and **LUCERO**, Circuit Judges.**

An Oklahoma state jury convicted Petitioner Timothy Robert Casady in 1983 of kidnapping, rape, sodomy, and forcible sodomy. As a result, Petitioner is currently serving a sentence of 150 years imprisonment in the Oklahoma State Penitentiary. On direct appeal, the Oklahoma Court of Criminal Appeals affirmed his convictions. Casady v. State, 721 P.2d 1342 (Okla. Crim. App. 1986). Petitioner next filed a

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

** After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2)(C); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

petition for post-conviction relief, which the state trial court denied. The Oklahoma Court of Criminal Appeals again affirmed. Casady v. Oklahoma, No. PC-96-1268 (Okla. Crim. App. Feb. 6, 1997) (unpublished order).

Petitioner thereafter filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the federal district court. In his petition, Petitioner raised essentially three claims: (1) the state trial court unconstitutionally denied him a psychiatric expert witness, (2) he received ineffective assistance of trial counsel, and (3) he received ineffective assistance of appellate counsel. In a thorough report and recommendation, a magistrate judge recommended denial of the petition. The district court adopted the report and recommendation in its entirety and denied the petition. The court subsequently denied Petitioner's application for a certificate of appealability. See 28 U.S.C. § 2253(c). His renewed application is before us.¹

A defendant may appeal the denial of a habeas corpus petition only if a "circuit justice or judge" issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A). A

¹ Because the district court entered its order denying the petition on August 26, 1999, and the clerk of court did not docket the Notice of Appeal until October 1, 1999, we issued a jurisdictional show cause order to Petitioner. See Fed. R. App. P. 4(a)(1)(A) (notice of appeal must be filed within 30 days after district court enters final judgment or order). In response, Petitioner submitted a copy of his receipt showing he sent certified mail to the district court on Monday, September 27, 1999. (Because the thirtieth day was Saturday, September 25, Petitioner had until the following Monday to submit his Notice of Appeal. See Fed. R. App. P. 26(a)(3)). Accordingly, Petitioner timely filed his Notice of Appeal under Fed. R. App. P. 4(c). See Houston v. Lack, 487 U.S. 266, 270 (1988) (a pro se prisoner's notice of appeal is deemed filed when it is delivered to prison officials for forwarding to the district court).

certificate of appealability “may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.” Id. §2253(c)(2); United States v. Simmonds, 111 F.3d 737, 746 (10th Cir. 1997). We conclude that Petitioner has failed to make the required showing.

We have thoroughly reviewed Defendant’s application for a certificate of appealability, his brief, the magistrate judge’s report and recommendation, the district court’s orders, and the entire federal and state court records before us. We conclude that Petitioner’s claims are meritless substantially for the reasons set forth in the magistrate judge’s report and recommendation. Because Petitioner has not made a substantial showing of the denial of a constitutional right, we deny his request for a certificate of appealability and dismiss the appeal.

CERTIFICATE OF APPEALABILITY DENIED; APPEAL DISMISSED.

Entered for the Court,

Bobby R. Baldock
Circuit Judge